

DOCKETED

FILED

OCT - 8 1976

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK
H. STUART CUNNINGHAM, CLERK
UNITED STATES DISTRICT COURT

MIDWAY MANUFACTURING COMPANY:

Deposition of

vs.

:

Richard I. Seligman

THE MAGNAVOX COMPANY

:

and

:

74 Civ 1657 CBM

SANDERS ASSOCIATES, INC.

:

74C1030

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

THE MAGNAVOX COMPANY, et al :

Consolidated Actions

vs.

:

74 C 1030

BALLY MANUFACTURING
CORPORATION, et al

:

74 C 2510

75 C 3153

75 C 3933

Deposition taken pursuant
to a subpoena and notice at the Sanders Associates, Inc.,
Headquarters; Spit Brook Road, Nashua, New Hampshire;
Wednesday, April 7, 1976; commencing at three o'clock in
the afternoon.

ERNEST W. NOLIN & ASSOCIATES

General Stenographic Reporters

369 ELGIN AVE., MANCHESTER, N. H. 03104

TELEPHONE: 623-6906

ORIGINAL

A. 8. PRESENT:

Q. For Midway Manufacturing Company, Bally Manufacturing Corporation and Empire:

A. Fitch, Even, Tabin & Ludeka, by Donald L. Welsh, Esq., 135 South LaSalle Street, Chicago, Illinois.

Q. For Atari, Inc.:

A. Flehr, Hohbach, Test, Albritton & Herbert, by Thomas O. Herbert, Esq., 160 Sansome Street, 15th Floor, San Francisco, California.

Q. For Sanders Associates, Inc., and Magnavox Company:

A. Theodore W. Anderson, Esq., and James T. Williams, Esq., 77 West Washington Street, Chicago, Illinois.

Q. Stanotype Reporter:

A. Ronald J. Hayward

Q. RICHARD I. SELIGMAN

called as a witness, being first duly sworn, was examined and testified as follows:

Q. (Interrogatories by Mr. Flannery.)

Q. Please state your full name?

A. Richard I. Seligman.

Q. Where do you live, Mr. Seligman?

A. 8 Wheaton Drive, Nashua, New Hampshire.

Q. What is your present position?

A. I am a patent attorney.

Q. For whom?

A. Sanders Associates.

Q. What are your duties as patent attorney for Sanders Associates?

A. Well, I would say all the general duties that are associated generally with a patent attorney.

Q. Are you admitted to any Bars in any states?

A. Massachusetts.

Q. Any others?

A. No.

Q. Who do you report to?

A. Louis Etlinger.

Q. Does he review your work before it is sent out?

A. Sometimes.

Q. Does he review amendments that you prepare?

A. Sometimes.

Q. How do you determine what those times are - that he reviews your work?

A. All work I send out of the office, I sent through Mr. Etlinger's office. It is his option how detailed

4

he wants to review it.

2 Q. Does he approve your work before it is sent out?

A. What do you mean by approve?

3 Q. Well, is he the one that sends the work out, for example, amendments?

A. Amendments go through his office and generally are initialed by him. Energy Committee

14 Q. Is the same thing true about applications that you prepare?

A. Generally.

15 Q. Will you please state your education after high school?

A. A BSSE at Northeastern University.

16 Q. What year?

A. 1958. A J. D., Boston College Law School, 1963.

17 Q. When did you start law school?

A. The fall of 1969.

18 Q. What did you do, go to night school?

A. Yes.

19 Q. What was your option in Northeastern University, electronics?

20 A. Electronics.

200 Q. Who did you go to work for after you received your

degree from Northeastern University?

A. E. G. & G.

Q. What type of work do they do? -theon?

A. Generally electronics.

Q. In what field? any experience at Raytheon on TV

A. At the time, primarily for the government. Much of it for the Atomic Energy Commission.

Q. And what did you do for them? r then?

A. I was a development engineer.

Q. What type of circuitry did you work on?

A. Various circuitry for particular applications.

Some control circuitry, some powersupply work, some telemetry work, some component work.

Q. Did you do any work on TV circuitry?

A. No. very electronics.

Q. How long did you continue to work for E G & G?

A. Roughly two, two and a half years.

Q. Who did you go to work for then?

A. Raytheon.

Q. What was your position at Raytheon? -le, did you

A. Quality control engineer.

Q. In what department?

A. Quality Control Department, I guess. -ia, did you go to

Q. I should say what products?

A. Radar.

Q. How long did you work for Raytheon?

A. About a year.

Q. Did you have any experience at Raytheon on TV circuits?

A. No.

Q. And who did you go to work for then?

A. Sylvania.

Q. What was your position with Sylvania?

A. Electronic engineer.

Q. Doing what?

A. Design work, as I recall.

Q. And what type of products?

A. Military electronics.

Q. How long did you work for Sylvania?

A. Possibly two years, no more.

Q. Did you do any work on TV circuitry?

A. No.

Q. With E G & G and Raytheon and Sylvania, did you

do any work with computers?

A. No.

Q. With AEC, E E G, Raytheon and Sylvania, did you do

A. any work with high-frequency electronics circuitry?

A. It depends what you consider high frequency. It's

Q. RF, is it?

A. Yes.

Q. What type of circuitry?

A. Some pulse circuitry.

Q. Could you elaborate on that a little bit, what type of pulse circuitry?

A. Some to do with light sources. High-speed light

Q. sources. did you work for I T T?

Q. Any other type of high-frequency circuitry?

A. Not that I recall. A half years. What type of work

Q. Who did you go to work for after you left Sylvania?

A. I T & T. Preparation of patent applications,

Q. And how long did you work for I T & T?

A. Approximately two and a half years. T T?

Q. That brings us up to about 1965?

A. When I left, '66. did the Watley facility put

Q. So you started to work for I T T in about June of

A. 1963? I'll government-related military and CIA.

A. I think it was around November or December of '63.

December, I would think.

Q. And what did you do for I T & T?

A. I was an attorney.

Q. When did you graduate from Boston College with a J. D.?

A. 1963.

Q. What month?

A. June.

Q. You did not work as an attorney between June and December of 1963?

A. That is correct.

Q. How long did you work for I T T?

A. I think I just answered that.

Q. I am sorry, two and a half years. What type of work did you do for I T & T?

A. Principally preparation of patent applications, U. S. and foreign, and prosecution.

Q. Were you assigned to any group at I T T?

A. The Nutley facility.

Q. And what products did the Nutley facility put out?

A. Primarily government-related military and FAA.

Q. Were any of the products - did any of the products include TV circuitry?

A. I don't believe so.

Q. Did any of the products include computer-type circuitry?

A. Computer-type circuitry?

Q. Yes. You were also responsible for the prosecution of

A. It depends. Application which resulted in the issuance of

Q. Well, did you do any work on computers while you were at I T T?

A. No. You were responsible for the writing of the

Q. You say you left I T T in 1966, about what month?

A. June.

Q. Who did you go to work for then? Prosecution of the

A. Sanders. Application which issued as the 285 patent?

Q. And you have been with Sanders since then?

A. That is correct. You were responsible for the writing of the

Q. Were you responsible for the writing of the

A. Applications which resulted in the 480 patent

Q. Were you also responsible for the prosecution

A. Yes. The application which issued as the 285 patent?

Q. Were you also responsible for the writing of the application which was abandoned in favor of the application which issued as the 480 patent?

A. Yes.

Q. Were you also responsible for the prosecution of

Q. the application which was abandoned which was on
Serial No. 697,798?

A. Yes.

Q. Were you also responsible for the prosecution of
the application which resulted in the issuance of
the 480 patent?

A. Yes. I believe Mr. Williams wrote a good part of it.

Q. Were you responsible for the writing of the
application which issued as the 284 patent?

A. Yes.

Q. Were you responsible for the prosecution of the
application which issued as the 284 patent?

A. Yes.

Q. Were you responsible for the writing of the
application which issued as the 285 patent?

A. Yes.

Q. Were you also responsible for the prosecution
of the application which issued as the 285 patent?

A. Yes.

Q. Were you responsible for writing the application
which issued as the 284 reissue patent?

A. Yes.

Q. I would say yes.

Q. Were you responsible for writing the declaration which was filed with that application?

A. I am not sure.

Q. Why aren't you sure?

A. I didn't write it.

Q. Who did write it?

A. I believe Mr. Williams wrote a good part of it.

Q. What did you have to do with the preparation of

A. the declaration which was filed with the application of the 284 reissue patent?

Q. Weren't you responsible? MR. ANDERSON: Well, I object,

A. on the ground of attorney-client privilege and work product as to what the contributions of various attorneys were in preparing the document and I instruct the witness not to answer.

A. I was in agreement with MR. FLANNERY: Can we have a running stipulation that he will take your advice in every question and will not answer if you instruct him not to answer?

A. MR. ANDERSON: Will you take my advice, Mr. Seligman, if I instruct you not

Q. to answer? THE WITNESS: I would say yes.

A. I would say so. MR. FLANNERY: Could we have a running stipulation on that?

MR. ANDERSON: Yes.

Q. Did you approve the declaration which was filed with the application which issued as the 284 reissue patent?

A. Did I approve of it?

Q. Yes.

A. I don't think it was my responsibility to approve it.

Q. Weren't you responsible for filing the application?

A. But ultimate responsibility in all these matters rests with Mr. Ettlinger.

Q. Well, did you approve it before you submitted it to Mr. Ettlinger?

A. I was in agreement with it, if that is what you

A. mean. Sometime before, of course, the filing date.

Q. Were you responsible for the prosecution of the application which issued as the 284 reissue

A. patent?

A. Yes.

Q. Were you responsible for the preparation of the

A. application which issued as the reissue 285 patent?

A. I would say so.

Q. Were you responsible for the preparation of the declaration which was filed with that application?

A. The same facts situation as related to the declaration regarding the 284 reissue are applicable here.

Q. You agree with the declaration, then?

A. Yes.

Q. Were you responsible for the prosecution of the application which issued as the 285 reissue patent?

A. Yes.

Q. What was your first knowledge of the video game device?

A. I believe it is when I got into the preparation of the application 697,798.

Q. Do you know when that was?

A. No. Sometime before, of course, the filing date; but I don't know how much before.

Q. And when was the filing date?

A. The patent says January 15, 1968.

Q. Do you recall what was your first contact with video games?

A. No.

Q. What is your first recollection of video games?

A. Preparing that application.

Q. Do you know how long prior to January 15, 1968, that you started to prepare that application?

A. No. . . . that date?

Q. Was it one month?

A. I have no idea. . . .

Q. Two months? . . .

A. I have no recollection.

Q. Would your file help you?

A. They might. . . .

Q. I think we have the files here, don't we?

A. The file which has been handed me doesn't help me at all.

Q. Do you have another file on that application?

A. I would believe there would be some work file which might have some drafts or something in it. This file didn't seem to help me as much as I thought it might because it doesn't have as many drafts as probably originally existed. I do see a draft in here dated January 8, 1968. . . .

Q. Do you know which draft that is? . . .

A. No, I don't. . . .

Q. Do you believe there were drafts prior to that you date? a to work on the application for the - for

A. Yes. application which was filed under the -

Q. Do you have any idea as to how many drafts there were prior to that date?

A. No, I don't. any device that was constructed which

Q. Prior to starting work on the application for

A. the video game devices, did you have any experience at all in TV circuits?

A. No. Mr. Anderson: I object, you

Q. Did you have any education in TV circuits? question

A. If any, very minimal. mean the first one he saw?

Q. Did you have any experience with computers?

A. Experience, work experience?

Q. Work, yes. Mr. Anderson: I don't believe

A. I don't believe I had any work experience. one.

Q. What type of experience did you have?

A. If there was any, it would be a very minimal which - amount in school. as the abandoned application,

Q. What did that consist of?

A. Principally circuits which would be used in a computer, digital type circuits, perhaps an experiment or two in the laboratory.

Q. Do you recall the first thing that you did when you started to work on the application for the - for the application which was filed under the - for the Serial No. 697,798?

A. No. I just said, I don't know if I ever saw it.

Q. Did you see any device that was constructed which incorporated any of the video game devices?

A. Yes. It was a -

Q. What devices did you see?

A. Something while I was MR. ANDERSON: I object, you haven't fixed any time frame from that last question or this one. Do you mean the first one he saw?

A. I would certainly MR. WELSH: I said before he started to write the application.

A. It would be impossible MR. ANDERSON: I don't believe you put that in the question or the prior one, that was in a question way back. I have been sitting here

Q. Before you started to write the application which - can we refer to it as the abandoned application, would that be clear to you? I have seen in the

laboratory and what MR. ANDERSON: Why not call

it 798, the last three digits. To generate it,

Q. All right, the 798 application.

A. I don't recall whether or not I saw it. of what

Q. What do you recall about any device which you saw prior to starting to write the application for the 798 application? as constructed prior or during

A. As I just said, I don't know if I ever saw any device before I started writing the application.

Q. Well, when did you first see that device? that of

A. I don't remember. you were writing?

Q. Well, give us an approximation.

A. Sometime while I was writing the application. to

Q. So that would be before January, 1968, is that correct?

A. correct? specific recollection.

A. I would certainly believe that. collection?

Q. What do you recall about that device? particular

A. It would be impossible for me to recall because I have seen all these devices throughout these

Q. number of years, as well as I have been sitting here during these depositions and seeing one inventor

A. after another go through these things, so I don't think I could separate what I have seen in the laboratory and what I have seen here.

Q. Well, we want your best effort to separate them, your best recollection. I am and I will ask you to

A. Well, I have no recollection whatsoever of what I had seen at the time I was writing this application, although, I know I certainly must have seen them.

117 Q. Was there a device constructed prior or during the time that you wrote the 798 application?

A. I believe so.

118 Q. Did the device incorporate the subject matter of the application you were writing?

A. I believe so.

119 Q. Do you recall any documents that you referred to during the time that you prepared that application?

A. I have no specific recollection.

120 Q. What do you mean by specific recollection?

A. That I particularly remember seeing a particular document at that particular time or an event occurring at that particular time.

121 Q. Well, what is your best recollection of what you saw?

A. I am sure I must have seen the disclosure that was submitted regarding this invention. I also vaguely recall seeing some diagrams.

122 Q. I place before you a document which has been previously marked Exhibit 36-1 and I will ask you if

A. that is the disclosure that you recall seeing?

A. I can't say for sure.

123 Q. Well, I am asking for your best recollection?

A. I just don't know.

124 Q. Is it your opinion that that is what you saw?

A. Even that, I couldn't give you an opinion. The things that I do recollect seeing were specific drawings.

125 Q. Is there a disclosure in the files - your working files - that would refresh your recollection as to what you saw?

A. I don't see a specific disclosure. I see some sheets which are familiar. For example, this sheet here showing a Figure 7 and a Figure 8. A couple of more sheets here labeled Figure 10 and Figure 10 which I am sure I saw during the preparation of the application.

126 Q. There is no disclosure in those files?

A. I don't see any.

127 Q. The diagrams you refer to, are those circuit diagrams provided by the inventor?

A. I believe so.

128 Q. Did you have any discussions with the inventors prior to the preparation of the first draft?

A. I have no specific recollection, but I am sure that I discussed it extensively while preparing the first draft.

129 Q. Do you have any notes or memorandums concerning those discussions with the inventor?

A. I would say that the previous drawings which are referred to labeled Figure 7 and 8 reflect the discussions with the inventor. I would guess that he prepared those while I was discussing them with him. There is another figure in here labeled Figure 10 which has various notations on it in my handwriting which would indicate to me that I discussed - that those notations were made while discussing how a particular circuit worked.

130 Q. Any other notes?

A. I haven't examined this page by page. There is a note on a Figure 9 here, which I can't read the entire thing, which is in my handwriting. There is a draft of a Figure 1B in my handwriting. The previously referred to Figures 1D and 1C bear some notations in my handwriting.

131 Q. I believe we have another file, Mr. Seligman, that possibly reflects to the same application.

MR. ANDERSON: Off the record.

Q. Mr. Bellman, I place before you a set of drawings
(Discussion off the record.)
which have been marked Exhibit 59-1 through 59-7

and ask you if you THE WITNESS: This other file

A. does bear papers which I believe were supplied to me
by the inventor and from which I prepared the
application.

Q. I notice the date of 12-18-67, is that your drawings?

A. handwriting? to be at least for the most part

A. Yes, it is, as which were used in the 708 application.

Q. Does that refresh your recollection as to when you
started to prepare the application?

A. If that date is accurate, and I have no reason to
believe it isn't, I certainly was preparing the
application at that time, you by the inventor?

A. I don't recall. MR. FLANNERY: Mark a set of
drawings which have seven sheets as Sanders' Exhibit
No. 59.1a?

A. I don't recall. MR. ANDERSON: Do you want to
mark those 59A, B and C for 1, 2 and 3?

A. I have no specific recollection, but I would have
(Whereupon, Exhibit 59-1
been assigned it by Mr. Bellman.)

Q. through 59-7 were marked
When he assigned you to write that application, did

he give you any detail for identification.)

134 Q. Mr. Seligman, I place before you a set of drawings
which have been marked Exhibit 59-1 through 59-7
and ask you if you can identify those drawings?

A. The drawings are familiar to me. I have seen them
before. Some of them bear notations in my

handwriting. From your prior testimony, you put

135 Q. Can you tell us anything more about those drawings?

A. They appear to be at least for the most part

the drawings which were used in the 798 application.

136 Q. In preparing that application? It by "up to date"

A. Yes. It is also in your handwriting?

137 Q. How did you receive those drawings?

A. I don't specifically recall. What you mean by

138 Q. Well, were they given to you by the inventor?

A. I don't recall. Possibly reflected equipment then in

139 Q. Were they in some sort of file when you received

the file? These drawings were up to date on that

A. I don't recall.

140 Q. How were you assigned to write the application?

A. I have no specific recollection, but I would have

A. been assigned it by Mr. Etlinger.

141 Q. When he assigned you to write that application, did

he give you any material? whose writing that is?

A. I know I had material and I don't know if he gave it to me or if he just told me to write an application for a particular docket or what. The circumstances of my being assigned the job, I don't recall them at all. recollection, but certainly - - -

Q. As I gather from your prior testimony, you put the date of 12-18-67 on those drawings, is that correct? these drawings.

A. It looks like my handwriting.

Q. And do you recall what you meant by "up to date" which is also in your handwriting? that you

A. I have no recollection. of Exhibits 37-1 and 38-1

Q. Do you have any opinion, as to what you mean by

A. that? possible, I remember authorizing the removal

A. I believe it probably reflected equipment then in being. action of which one I did.

Q. And that these drawings were up to date on that equipment? operation of it, wherever it, wherever it

A. That is what I believe. was in the area came.

Q. Do you recall who gave you these drawings?

A. No. I don't know the person's name. I don't

Q. There appears to be someone else's writing on these

drawings, could you tell us whose writing that is?

A. The handwriting isn't familiar to me.

Q. Do you recall discussing these drawings with anyone prior to or during the time that you wrote the application, the 798 application?

A. I have no specific recollection, but certainly - - -

Q. Do you have any recollection?

A. I certainly must have. There is no doubt that I discussed these drawings.

Q. With whom?

A. With either Mr. Baer or Mr. Harrison.

Q. Mr. Seligman, it is my understanding that you authorized the removal of Exhibits 37-1 and 36-1 from one of those files, is that correct?

A. It is possible, I remember authorizing the removal of certain documents from the files. I have no recollection of which one I did.

MR. ANDERSON: I believe the previous deposition will show that, whatever the record is, from where those documents came.

MR. FLANNERY: I am just trying to keep the record straight. If he doesn't recall, fine.

THE WITNESS: I recall authorizing the removal of documents from files, but I can't remember which documents from which file.

Q. Do these two disclosures refer to the 798 application? And I am referring to disclosure Exhibit 36-1 and 37-1?

MR. ANDERSON: Mr. Flannery, do you want his present judgment and opinion or do you want the fact as he recalls it from the time he did the work?

MR. FLANNERY: Well, let's take it both ways.

MR. ANDERSON: Well, take them one at a time just so the record will be clear, which one do you want first?

MR. FLANNERY: I would like to have his recollection as of that time.

THE WITNESS: My recollection as to what?

Q. As to whether those are the disclosures that you worked from in preparing the application?

A. I have no recollection.

154

Q. Is it your opinion that those are the disclosures that you worked from?

155

MR. ANDERSON: Is that his present opinion?

A. That is correct. MR. FLANNERY: Right.

156

Q. Do you know of any? THE WITNESS: Well, looking at Exhibit 37-1, certainly the subject matter covered by this disclosure was incorporated into the application. I don't think I could go any further in saying that I used this.

155

Q. Well, wasn't it the normal procedure for your Patent Department to assign ID numbers to the disclosures?

A. That is correct.

156

Q. And doesn't that disclosure which you have in your hand which is Exhibit 37 have that invention disclosure number?

A. No, it doesn't.

157

Q. What invention disclosure number does it have?

A. It doesn't have any, at least not where the number should be.

158

Q. What about the Exhibit 36, doesn't that display an invention disclosure number?

A. Yes.

159 Q. Isn't that the same invention disclosure number that
is assigned to the files on this application, the
798 application?

A. That is correct.

160 Q. Do you know of any other disclosure bearing that
invention disclosure number?

A. Exhibit 36 has a reference to an original disclosure
data. It says original disclosure data, September 1,
1966, through June, 1967.

161 Q. And that disclosure is missing?

A. I would have to assume that. I am not sure it is
missing, it might be here somewhere, but it is not
along with this Exhibit 36.

162 Q. You are referring to the statement on page 3 of
Exhibit 36 which states, "original disclosure data
(February 1, 1966, through June, 1967)"? Is that
what you are referring to?

A. I don't recall it as being February. September 1,
1966.

163 Q. Do you know what document that is?

A. Not offhand.

164 Q. Do you recall reviewing any engineering notebooks

Q. in connection with the preparation of the application?

A. No, I did not submit it to Mr. Harrison.

165 Q. Do you recall how many drafts there were that you

A. prepared? I really remember, but my practice would be

A. No, I did not submit it to Mr. Baer.

166 Q. Do your files indicate how many drafts you prepared?

A. Not the files that are before me.

167 Q. Do you recall what draft you submitted to the inventor or inventors for signature?

A. I don't recall. During the application?

168 Q. Well, do your files help you to refresh your recollection? And to make the question clear, what I am asking for the first draft that you submitted to the inventors for review. Files that would indicate a particular MR. ANDERSON: The inventor.

Q. The application, Serial No. 798, is in the name of Ralph H. Baer.

169 Q. Well, maybe we can establish that now. As I understand your prior testimony, you may have talked to Mr. Harrison or to Mr. Baer concerning the preparation of the application?

A. That is correct. Changes in the description.

170 Q. Did you only submit the application to Mr. Baer for
review or did you also submit it to Mr. Harrison
for review?

A. I don't really remember, but my practice would be
to submit it to Mr. Baer.

171 Q. Do you know if Mr. Harrison also reviewed the
application?

A. I don't know.

172 Q. Do you have any recollection as to - - -

A. No.

173 Q. As to him reviewing the application?

A. No, I don't.

174 Q. Now, from your files, can you determine which draft
you first submitted to Mr. Baer for his review?

A. I don't see anything in these files that would
indicate a particular draft being submitted to him.

175 Q. Do you see any draft which contains notes by him
or Mr. Harrison?

A. I see a draft which contains drawings that were
made by someone other than myself. That particular

176 Q. drawing - - -

Q. Well, let's stick first to the description rather

A. than the drawings. Changes in the description made

by Mr. Harrison or Mr. Baer or anyone else other than yourself?

A. No, I don't see any drafts. I don't particularly

MR. FLANNERY: Mr. Williams, have you pulled out any drafts on the ground of privilege?

MR. WILLIAMS: I don't believe so and if there were any, they would have been identified.

77 Q. Do you recall submitting a draft to the inventors for a review?

MR. ANDERSON: You mean inventor.

MR. FLANNERY: Inventor, I am sorry.

THE WITNESS: Not specifically, but I would have.

78 Q. Do you recall if Mr. Baer made any changes in the draft?

A. I don't recall.

79 Q. Do you recall anything about Mr. Baer's review of that draft?

A. No.

180 Q. Do you recall revising the draft after Mr. Baer
A. reviewed the draft?

A. If in fact Mr. Baer reviewed it. I don't particularly
recall revising it after review, although I strongly
believe that that was done based upon information
or documents that I see in this file. and 1-1

181 Q. The document you are referring to is Figure 1D
and 1C? recall.

A. That is correct. all destroying any drafts?

82 Q. Is it correct that that is Mr. Rusch's handwriting?

A. Is that correct, no, I have no belief in that.

83 Q. Are there any drafts in your files?

A. There is a draft.

84 Q. Are there any changes on that draft at all? were

A. Yes. 1-1

85 Q. Where are the changes? (is in hand, to my best

A. Throughout the draft there are changes. 1-1

86 Q. And are those changes in your handwriting?

A. Yes. was the condition. - - - Do you recall the

87 Q. Do you recall what occasioned those changes that
you made? it is to the information for the

A. No. 1-1

88 Q. Did Mr. Baer write or help you to write the

application other than to advise you? ~~substantive~~

A. I don't recall.

Q. Is it your policy to destroy drafts reviewed by inventors?

A. At present I tend to keep the drafts.

Q. What was your normal procedure in 1968 and 1969 concerning drafts?

A. I don't recall.

Q. Well, do you recall destroying any drafts?

A. Not specifically, but the files would certainly indicate that was so.

Q. That the drafts were destroyed?

A. Yes.

Q. Why does the file indicate that the drafts were destroyed?

A. Because the draft that is in here, to my best belief, is a little bit too complete and polished to be indicative of a first draft.

Q. What was the condition - - - Do you recall the condition of the application at the time that you submitted it to the inventor for signing of the declaration?

A. I don't recall. I would assume that it would be

Q. complete. It is my policy to have it sufficiently reviewed before the final submission to the inventor. I didn't.

Q. Would the drawings have been inked? inventor was

A. Inked? application?

Q. Yes, they can't recall. I assume Mr. Etlinger.

A. Probably, but I can't say for sure. and the inventor

Q. Was it your normal procedure in 1968 and '69 to

A. submit the application with the drawings inked to the the inventor for signature? initially identified

A. I don't recall. of the invention and unless

Q. You don't recall your normal procedure? thing that

A. In 1968, no. also, that would be adopted. that

Q. Do you recall that the inventor made any changes in the application after he signed the declaration?

A. After he signed the declaration, I would rather

A. doubt it. time looked into the inventorship question.

Q. I am asking you if you recall it?

A. Well, if changes were made after he signed, if you

A. are talking about the declaration that was filed

with the Patent Office, I can't recall it, but the

A. answer would have to be no because I wouldn't have

filed it if he made any changes. I was asked?

Q. Did you make any changes in the declaration after the declaration was signed?

A. I am sure I didn't.

Q. Who made the decision as to who the inventor was of that application?

A. I really can't recall. I assume Mr. Etlinger.

Q. Did Mr. Etlinger normally determine who the inventor was on applications?

A. Under the normal circumstances, whoever submitted the disclosure would be at least initially identified as the inventor of the invention and unless subsequent investigation turned up something that proved otherwise, that would be accepted.

Q. Did you have anything to do with determining who the inventor was of the subject matter of the 798 application?

A. I at one time locked into the inventorship question, yes.

Q. When was that?

A. Sometime after the application was filed.

Q. Could you give us an approximate date?

A. No.

Q. Was it a year after the application was filed?

A. I have no idea.

Q. Is it a fact it was about the time that you were preparing to file a divisional application?

A. It preceded that date by I'd say not too long a period.

Q. What did your investigation consist of?

A. Discussing, I believe, the matter with Mr. Baer, - on Mr. Busch.

Q. Could you give us the reasons why you made the investigation at that time rather than at the time that you filed the original application?

MR. ANDERSON: Well, I object, he didn't say that it was rather than anything.

THE WITNESS: Do you want to repeat the question, please?

(Whereupon, the previous question was read back by the reporter.)

MR. ANDERSON: I object on the ground that the question is couched in terms contrary to the testimony.

THE WITNESS: I didn't say

that I didn't make an investigation earlier, I don't recall whether I did or did not; but I did not say that I did not make an investigation as to the inventorship question.

Q. Well, did you make an investigation earlier?

A. I don't know. I don't recall. Matter he believed

Q. Do you recall anything about making an investigation earlier? Not matter and asked me to look into it.

A. No. It is Figure 7C and 7D you referred to earlier?

Q. Well, then, what happened on the second investigation?

A. Why did you make an investigation then?

A. Because it was brought to my attention that on a certain part of the subject matter of the 798 application, it included a contribution by Mr. Rusch.

Q. Who called it to your attention? The even-odd

A. Mr. Rusch. I recall he which is shown in Figure 8

Q. How did he call it to your attention?

A. Verbally, I believe. of your investigation?

Q. What were the circumstances of his telling you that he contributed something to the 798 application?

A. I don't recall the circumstances, I just recall that

he spoke to me about it and thought that he had made some contribution.

Q. What did he say to you?

A. I don't recall. He said something to indicate

Q. Do you recall anything about the conversation?

A. Just that a particular subject matter he believed that he was a co-inventor along with Mr. Baer in that subject matter and asked me to look into it.

Q. That is Figure 7C and 7D you referred to earlier?

A. 7C and 7D, no. You mean 1C and 1D or 7C and 7D?

Q. I am sorry, 1C and 1D. Is that right?

A. No, I don't think so. No, it does not pertain to that. Also a fact that Mr. Baer had

Q. All right; what subject matter are you referring to?

A. Looking at the 480 patent, it is the even-odd discernment technique which is shown in Figures 9 and 10.

Q. What were the results of your investigation?

A. That it in fact should have been a joint inventorship of that particular portion of the application.

Q. At that time, did you also investigate the inventorship of the other subject matter in the

480 application?

A. I don't believe so.

Q. Do you recall anything about it?

A. I don't think there was any evidence to indicate that Mr. Baer was not definitely the inventor of the rest of it.

Q. Was it a fact that Mr. Harrison built all the circuits in the original device?

MR. ANDERSON: If you know.

THE WITNESS: I know that he built a number of circuits, certainly, but I don't think that qualifies him as a joint inventor.

Q. Isn't it also a fact that Mr. Harrison designed some of the original circuits?

A. Possibly.

Q. Well, do you know if he did or not?

A. Yes, he did design some of the circuits.

Q. Do you know what circuits he has designed?

A. No, I don't at this time. Not at this time.

Q. Do you have any papers or documents which would indicate which circuits he had designed?

A. No, I don't.

Q. At the time that you or at the time that the

application was - strike that. At the time that Mr. Baer was designated as the inventor of the subject matter of the 798 application, did you ever consult Mr. Harrison to find out whether he was the inventor of any of the subject matter of that application? That Mr. Harrison was the one who

A. I don't recall. Circuits which resulted in the

Q. Has Mr. Harrison ever indicated to you that he was the inventor of some of the subject matter of the 798 application? That has been asked and

A. No, he hasn't.

Q. Do you know if Mr. Baer constructed any of the circuits of the 798 application? I am asking if

A. I don't know.

Q. Did you know at the time that you filed there application as to whether or not Mr. Baer constructed any of the circuits? By my present

A. I don't recall. As to be indicated by sitting here

Q. Do you recall investigating or determining who did build the circuits? Did and did not construct.

A. I can just give you my general practice, that when more than one person is involved in any invention, when I am called upon to make an application, I look

into the matter to see about the inventorship question, but I have no specific recollection in this particular instance and I don't know whether or not I ever asked Mr. Baer or Mr. Harrison whether Mr. Baer constructed any circuits.

Q. Did you hear that Mr. Harrison was the one who constructed the circuits which resulted in the application 798? as the originator of the coincidence feature which was disclosed?

MR. ANDERSON: I object, your honor. I think the same question has been asked and answered. Are you saying does he know or has he heard as of today?

MR. FLANNERY: I asked before, Did he know? and he didn't know. I am asking if he heard now.

THE WITNESS: If you are asking for my recollection at the time in 1968, I just don't have any. If you are asking my present belief, that has to be tainted by sitting here and listening to Mr. Harrison's deposition for a week telling me what he did and did not construct, yes, of course I know he now built many of the circuits because he testified to that.

Q. Do you recall a coincidence feature being disclosed

in the 798 application?

A. Yes.

Q. Do you recall what was the source of the disclosure of the coincidence feature in the 798 application?

A. I believe it is probably shown in that set of drawings which you marked as Exhibit 59. But, I think

Q. Do you know or did you hear that Mr. Harrison claimed that he was the originator of the coincidence feature which was disclosed in the 798 application?

MR. ANDERSON: I object to the question. Are you saying does he know or has he heard as of today or as of some prior date?

MR. FLANNERY: Well, let's take it today.

MR. ANDERSON: Then reread the question in that context.

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: No.

Q. Do you recall Mr. Baer providing you or any disclosure by Mr. Baer of circuit details of the

video game devices that were disclosed in the 798 application? THE WITNESS: Well, I have

A. I don't know who provided me with the circuit details. It could have been Mr. Baer, it could

Q. Well, will you answer my question, then?

THE WITNESS: Well, you have no say. MR. ANDERSON: I object, I think he has answered the question.

A. I would say that is. MR. FLANNERY: I asked him about Mr. Baer, the answer is yes or no and then he can qualify it. Baer.

Where are the circuit? MR. ANDERSON: Well, he has answered the question. About basic circuits down

to resistance and so. THE WITNESS: Could I hear the question again? The witness, isn't it?

With respect to circuit devices, is there any circuit shown there? (Whereupon, the previous

question was read back

A. No, unless you could answer a question to me by the reporter.)

and some terminal is a circuit correction.

Q. In other words, you don't remember Mr. Baer providing you with any of those details? the

details office? MR. ANDERSON: I object to the interpretation of the witness's answer.

MR. FLANNERY: Then he can

answer my question.

THE WITNESS: Well, I have no specific recollection of who gave me these action drawings. It could have been Mr. Baer, it could have been Mr. Harrison. The question, is that

Q. Well, you have no specific recollection of Mr. Baer giving you the details?

A. I would say that is probably true, though again looking at this Figure 1D and 1C, I believe it was given to me by Mr. Baer. I believe for the

Q. Where are the circuit details on 1C and 1D?"

A. Well, if you are talking about basic circuits down to resistance and capacitors, no. It was accurate

Q. Well, that is schematic drawings, isn't it?

With respect to circuit devices, is there any circuits shown there? I believe it was for that

A. No, unless you considered a connection to an antenna terminal is a circuit connection. Well,

Q. In your files, do you have a copy of the office action and amendments that were filed in the Patent Office?

MR. ANDERSON: In the what?

MR. FLANNERY: In the 798

application file.

THE WITNESS: Yes.

Q. I refer you to the amendment in the 798 application file on page 9 in particular of the amendment and first of all you did write the amendment, is that correct?

A. That is correct.

Q. And on page 9 it states, "This novel discovery is that this standard television receiver used in the home can be further employed for the playing of games and other similar activities."

A. Yes.

Q. Did you believe that that statement was accurate when you wrote it?

A. Yes, sir.

Q. What was the basis on which - the basis for that statement?

MR. ANDERSON: If you recall.

Do you want his recollection of what he was thinking then and what is the basis?

MR. FLANNERY: Yes.

THE WITNESS: What is the basis for the statement that you can use a home

receiver for playing games?

Q. No, that it was a novel discovery and that was the novel discovery.

Q. Because I had no other prior art to indicate that it was in fact not a novel discovery.

Q. And what do you mean by standard television receiver?

MR. ANDERSON: I object, the document speaks for itself and it is on file in the Patent Office and you are asking this witness what he meant in something he wrote many years ago. I think the subject is probably entitled to an attorney-client privilege and I think it is going beyond any reasonable investigation of the history of prosecution in this case and I will instruct the witness not to answer. He meant what he said, I am sure.

MR. FLANNERY: On what grounds?

MR. ANDERSON: If he didn't, I think it is privilege.

MR. FLANNERY: What is privilege?

MR. ANDERSON: It is an

attorney-client privilege.

MR. FLANNERY: That is what I mean, is that the ground you are instructing him not to answer on?

MR. ANDERSON: That is right.

MR. FLANNERY: Not attorney work product?

MR. ANDERSON: Attorney-client privilege.

MR. FLANNERY: As to what he meant by standard television receiver?

MR. ANDERSON: As to what he meant. I think it is immaterial what he meant as the advocate. I think the thing that is critical is what the documents say. I think mental processes are privileged.

Q. What were the basis or the facts on which you based the term "standard television receiver"?

MR. ANDERSON: Read the question again.

(Whereupon, the previous question was read back

by the reporter.)

MR. ANDERSON: I object to the question, it is vague and ambiguous and meaningless.

Q. Do you understand the question?

MR. ANDERSON: I instruct the witness not to answer. I don't understand the question.

Q. Do you understand the question?

MR. ANDERSON: I instruct you not to answer.

Q. Do you have any basis for the use of the term "standard television receiver" in that statement?

MR. ANDERSON: Did he at that time have any basis for using the term "standard television receiver"?

MR. FLANNERY: Yes.

MR. ANDERSON: I raise the same objection. If he can answer that one, I will permit him to.

THE WITNESS: I can't say what my thoughts were back at the time of writing that amendment, but I probably believed that the basis for the term was derived from the language

used in the specification.

Q. Now, referring to the next page of that amendment, it says down at the bottom, "This third use of the receiver is a new breakthrough in the art and in view of the interest generated by television manufacturers to applicant's licensing attempts in this area, no doubt this will blossom forth into an entirely new and commonly used consumer product."

In March of 1970, what TV manufacturers were interested in applicant's licensing attempts?

A. Without looking back at the files and who was in and who we were discussing this matter with, I couldn't say for sure.

Q. Do you have a recollection of anybody being interested at that time?

A. I can't say at that time because I can't place the time of interest of these manufacturers with specific dates. There certainly were a number of manufacturers that were interested.

Q. Could you name any at that time?

A. That were very interested?

Q. Yes.

A. Clearly Magnavox, whether at that time or not, I

don't know. RCA and General Electric were both very interested.

Q. How did they show interest?

A. RCA showed interest by getting very close to entering into an agreement to take a license on these inventions.

Q. How did GE show an interest?

A. I am sure there was more than one visit or communication with GE and I believe there were verbal statements by GE people expressing their great interest.

MR. ANDERSON: For the record, the files have been produced for inspection and copying by the defendants relating to various television and receiver manufacturers and their interests.

MR. FLANNERY: I am just trying to find out what he referred to, Counselor.

Q. Now, referring to page 12, you state at the bottom of page 12, "Applicant has presented a unique combination; namely, a conventional television receiver and means for displaying dots thereon to be manipulated by participants." Did you believe

that statement to be true when you wrote it?

A. Yes.

Q. Do you recall what you meant by conventional television receiver?

A. I can only guess, a receiver that was used in a home to receive broadcasts.

MR. FLANNERY: Why don't we adjourn at this time until nine-thirty tomorrow morning.

(Whereupon, the deposition in the above-entitled matter was continued at 4:35 p.m.)

Paul H. Flannery
Deponent

THE STATE OF NEW HAMPSHIRE)
COUNTY OF Hillsborough) SS.

Subscribed and sworn to before me this 13th
day of May 19 76.

Marilyn Estrada
Notary Public

EXHIBITSNo.PageDescription59-1 through
59-7

21

Group of drawings from File D-2401.